SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 24 1968
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

October Term, 1968.
No. 496

MARIA GORUN and PARASCHIVA GIURGIU, on behalf of themselves, and all others similarly situated,

Appellants,

vs.

VICTOR H. FALL, LESTER H. LOBLE, STATE TREASURER OF MONTANA, and UNION BANK AND TRUST COMPANY, Helena, Montana,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

RESPONSE OF APPELLEE, UNION BANK AND TRUST COMPANY, HELENA, MONTANA

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HELENA INDEPENDENT-RECORD
HELENA, MONTANA

TABLE OF CONTENTS

	Page
Reason for Form of Executor's Response	1
Question Presented	2
Statutes Involved	2
Statement	2
The Montana Statute is Unconstitutional	3

TABLE OF AUTHORITIES

Cases Cited

Goldstein v. Cox, 389 U.S. 581	3
Zschernig v. Miller, 389 U.S. 429	3

Statutes Cited

Section 91-520, Revised Codes of Montana, 1947, as amended	2, 3

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REASON FOR FORM OF EXECUTOR'S RESPONSE

This appellee, Union Bank and Trust Company, Helena, Montana, is the executor named in the Last Will and Testament herein. The reason for the form of this response is that said appellee executor takes the position said will is valid and should be carried out according to its terms. Hence, a motion to dismiss or affirm would not be appropriate, the court below having in effect upheld the validity of the Montana reciprocity statute, which could defeat the provisions of the will, as regards taking by the Romanian beneficiaries.

This appellee was requested by letter dated November 18, 1968, from the office of the Clerk of this Court, to file a "response," and after consultation with

personnel of this Court by telephone, this form of response seems appropriate.

The Court should also be advised that counsel for this appellee will not appear and argue this case, unless ordered to do so by the Court, since counsel for the Romanian heirs have specifically requested that we do not travel to Washington, D.C., and argue, because of the expense which the estate would thereby incur. The Court should be further advised that none of counsel for the appellee executor are admitted to practice before this Court, and that this response is made and filed at the specific request of this Court.

QUESTION PRESENTED

So far as this appellee can see, the single question here presented is whether Section 91-520, Revised Codes of Montana, 1947, as amended, is unconstitutional.

STATUTES INVOLVED

Section 91-520, Revised Codes of Montana, 1947, as amended.

STATEMENT

The sole obstacle, if any, to inheritance by the Romanian beneficiaries of this will is the above-mentioned Section 91-520, Revised Codes of Montana, 1947, as amended.

This appellee executor was named as defendant for procedural reasons, and has never taken the position that said Montana statute is operative to defeat the dispositive provisions of the will. On the contrary, it is the position of said executor that the state statute is unconstitutional, and in the court below this appellee in effect joined in the appellants' motion for sum-

mary judgment by specifically not resisting said motion and filing a brief stating its reasons therefor, and taking the same position at the hearing on said motion.

THE MONTANA STATUTE IS UNCONSTITUTIONAL

Montana Code Section 91-520 is certainly unconstitutional under the rationale and decision of this Court in *Zschernig v. Miller*, 389 U.S. 429, and *Goldstein v. Cox*, 389 U.S. 581. There is no material difference between the Montana statute and the other state statutes considered in those cases. The Montana statute purports to forbid inheritance by residents of foreign countries unless such residents carry the burden of proving that reciprocity of inheritance and movement of money or property from the country of residence to the United States exists in the country of residence.

The position of this appellee is simply that *Zschernig* and *Goldstein* have in effect declared the unconstitutionality of all such state statutes on the ground that they contain such provisions, which are an unconstitutional invasion of the Federal prerogative.

We have been advised by counsel for appellants that this position will be fully presented and argued by them, and we therefore feel that any further elucidation by this appellee would be redundant; unless, of course, we are ordered to appear and argue in this cause, in which event we would desire the privilege of filing appropriate brief or briefs.

Respectfully submitted,
LOBLE, PICOTTE & LOBLE

By.....
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